BORA LASKIN LAW LIBRARY
3 1761 10084398 6

REGULATING A MARKET ECONOMY

(Monopolies and Restrictive Practices)

Bruce Dunlop

Volume 2

1981-82

REGULATING A MARKET ECONOMY

(Monopolies and Restrictive Practices)

Bruce Dunlop

Volume 2

1981-82

For use in the Faculty of Law
University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/regulatingmarket02dunl

TABLE OF CONTENTS

Introduction 1

PART ONE

RESTRAINT OF TRADE AT COMMON LAW

Chapter One: Historical Perspective

(a) Monopoly 3

- Case of Monopolies 3
- Statute of Monopolies 6
- Letwin, English Common Law Concerning Monopolies 7

(b) Restraint of Trade 16

- Letwin, English Common Law Concerning Monopolies 16
- Blake, Employee Agreements Not to Compete 18

Chapter Two: Covenants in Restraint of Trade

(a) In General 20

- Vancouver Malt & Sake Brewing Co. Ltd. v. Vancouver Breweries Ltd. 20

(b) Covenants Ancillary to the Sale of a Business 23

- Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co. Ltd. 25
- Greening Industries Ltd. v. Penny 26

(c) Covenants Ancillary to Contracts of Employment 33

- Herbert Morris Ltd. v. Saxelby 33
- T.S. Taylor Machinery Co. v. Biggar 41
- Jiffy Foods Ltd. v. Chomaki 45
- Green v. Stanton 48
- Sherk v. Horwitz 52
- Taylor v. McQuilkin 56
- Kores Mftg. Co. Ltd. v. Kolog Mftg. Co. Ltd. 57
- Blake, Employee Agreements not to Compete 65
- Stephens v. Gulf Oil Canada Ltd. 68
- International Tools Ltd. v. Kollar 70
- Blake, Employee Agreements not to Compete 74

(d) Covenants Ancillary to the Sale of Land 78

- Quadramain Pty. Ltd. v. Sevastapol Pty. Ltd. 78
- Stephens v. Gulf Oil Canada Ltd. 89

(e) Remedies 92

- Orville Kerr Ltd. v. Dewitt 92
- Detroit Football Club v. Dublinski 93

PART TWO 97

COMPETITION LEGISLATION

Chapter Three: Introduction to Competition Policy

(a) Economic Conceptions 98

- Gellhorn, Antitrust Law and Economics 98

(b) Common Law Approaches 115

- Ontario Salt Co. v. Merchants Salt Co. 115
- Mogul Steamship Co. v. McGregor, Gow & Co. 119

(c) Competition Policy 129

- The Attorney General's National Committee to Study the Antitrust Laws 129
- Economic Council of Canada, Interim Report, on Competition 143

(d) History of Canadian Legislation 159

- Skeoch, Restrictive Trade Practices in Canada 159

(e) Administration 178

- Report of the Director of the Combines Investigation Branch 178
- McDonald and Skeoch Dynamic Change & Accountability in a Canadian Market Economy 181

Chapter Four: Collaboration Among Competitors 183

(a) The method of collaboration, The Cartel 183

- McGee, Cartels: Organization and Functions 183

(b) Unacceptable Collaboration: Lessening Competition Unduly 188

- Rex v. Elliott 188
- Weidman v. Shragge 192
- Container Materials Ltd. et al v. The King 209
- Howard Smith Paper Mills Limited et al v. The Queen 220
- Kilgour, Comment on Howard Smith et al v. The Queen 237
Smith et al v. The Queen 237
- Reg. v. Abitibi Pulp & Paper Co. 240
- Regina v. Canadian Coat and Apron Supply Ltd. et al 242
- Regina v. J.W. Mills & Son Ltd. et al 256
- Aetna Insurance Co. et al. v. The Queen 277
-Atlantic Sugar Refineries Co. Ltd. et al. v. Attorney-General of Canada 305
- Areeda, Antitrust Analysis 319
- R. v. Anthes Business Forms Ltd. etal 323
- Economic Council of Canada, Interim Report on Competition Policy 336
- Kaysen & Turner, Antitrust Policy 338
- Sherman Act, Sec. 1 339
- United States v. Trenton Potteries Co. 340
- United States v. Socony-Vacuum Oil Co. Inc. 342
- Posner, Antitrust 350
- Bork, The Rule of Reason and The Per Se Concept 350

(c) What is an Agreement? Conscious Parallelism 351

- R. v. Armco Canada Ltd. 351
- Regina v. Canada Cement LaFarge Ltd. et al 356
- R. v. Aluminum Company of Canada et al 358
- Turner, The Definition of Agreements under the Sherman Act 361

(d) Permissible Collaboration 365

- Report of the Attorney General's National Committee to Study the Antitrust Laws 365
- R. v. Electrical Contractors Assoc. of Ontario and Dent, 367
- Wilcox, Competition and Monopoly in in American Industry 371
- R. v. St. Lawrence Corp. 376
- U.S. v. Container Corporation of America 380

(e) Exempted Activities 388

(i) Collective Bargaining
- R. v. Electrical Contractors Assoc. 388
- Jacobs & Winter, Antitrust and Athletes 388

(ii) Export Agreements 391

- Economic Council of Canada, Interim Report on Competition Policy 391

(f) Professional and Amateur Sport 395

- Eastham v. Newcastle United Football Club Ltd. 395
- Kapp v. National Football League 401

Chapter Five: Mergers 408

- Regina v. Canadian Breweries Ltd. 408
- Regina v. British Columbia Sugar Refining Co. Ltd. 421
- Brown Shoe Co. v. United States 440

Chapter Six: Monopoly 458

- Regina v. K.C. Irving Ltd. 458
- Eddy Match Co. Ltd. v. The Queen 465
- United States v. Aluminum Co. of America 475
- R. v. Canadian General Electric Co. Ltd. et al. 18

Chapter Seven: Vertical Restraints 494

(a) Resale Price Maintenance 494

- Report of the Committee to Study Combines Legislation 494
- Skeoch, Restrictive Trade Practices in Canada 496
- Regina v. Sunbeam Corporation Ltd. 504
- Regina v. William E. Coutts Co. Ltd. 511

(b) Refusal to Deal and Exclusive Dealing 521

- U.K. Monopolies Commission Report on Collective Discrimination 521
- Report Concerning the Manufacture, Distribution and Sale of Ammunition 539
- Restrictive Trade Practices Report on the Grocery Trade 543
- Stephens v. Gulf Oil Canada Ltd. (H.C.) 544
- Stephens v. Gulf Oil Canada Ltd. (A.C.) 560
- A. Schroeder Music Publishing Co. Ltd. v. Macaulay 565
- Standard Oil Co. of California v. United States 569

(c) Tying Arrangements 579

- International Salt Co. Inc. v. United States 579
- United States v. Jerrold Electronics Corp. 583

(d) Price Discrimination 584

- Restrictive Trade Practices Commission Report on Pricing of Mary Maxim Products 584
- Regina v. Carnation Co. Ltd. 588

(e) Consignment Selling 601

- Restrictive Trade Practices Commission Report on North Star and Shell Gas 601